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EXAMINER

GELLNER, JEFFREY L

| ART UNIT | PAPER NUMBER |
|----------|--------------|
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3643

DATE MAILED: 04/10/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Applicant(s)

10/090,567

Applicant(s)

WEDER, DONALD E.

Examiner

Jeffrey L. Gellner

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 December 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-10,12-24,31-33,35 and 36 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-10,12-24,31-33,35 and 36 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, ⁴~~9~~-10, 31, and 33 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Olney et al. (US 4,098,177) in view of Adeboi et al. (4,382,861).

As to Claim 1, Olney et al. disclose a preformed sleeve for covering a pot (Figs. 2 and 3) having an upper end, lower end, and outer peripheral surface comprising a base portion having an upper end (region around leadline of 112 in Fig. 3) and closed lower end (region around leadline 26a of Fig. 3; 108 of Fig. 2); a skirt portion (region above leadline of 112 in Fig. 3) extending from the upper end of the base; and a plurality of unconnected, vertically oriented, accordion-like, expandable folds (114 of Figs. 2 and 3) in the base wherein when a pot is in the sleeve the folds expand so that the base substantially covers and surrounds the outer peripheral surface of the pot. Not disclosed is the base portion initially constructed to have a flat condition having a flat condition prior to being opened for receiving a pot and having a tapered shape when in the flat condition. Adeboi et al., however, discloses a preformed sleeve with base portion initially constructed to have a flat condition (shown in Fig. 2) having a flat condition prior to being opened (defined as being formed into a sleeve/filter) for receiving a pot and having a tapered shape when in the flat condition (shown in Fig. 2). It would have been obvious to one of

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ordinary skill in the art at the time of the invention to modify the sleeve of Olney et al. by constructing it in a flattened, tapered condition as disclosed by Adeboi et al. so as to have a sleeve that is simple and inexpensive to manufacture (see Adeboi et al. at col. 3 lines 9-11) as well as efficient to transport in bulk.

As to Claims 4-5, Olney et al. as modified by Adeboi et al. further the cover a thickness of about 0.1 mil to about 30 mils (col. 2 lines 14-20).

As to Claim 6, Olney et al. as modified by Adeboi et al. further disclose the material paper (col. 2 line 16).

As to Claim 7, Olney et al. as modified by Adeboi et al. further disclose accordion-type folds (Fig. 3).

As to Claim 8, Olney et al. as modified by Adeboi et al. further disclose a portion serving as a handle (any part of region around leadline 114 in Fig. 3).

As to Claim 9, Olney et al. as modified by Adeboi et al. further disclose a drainage hole (110 of Fig. 2).

As to Claim 10, Olney et al. as modified by Adeboi et al. further disclose the folds continuous between the base portion and the skirt portion.

As to Claim 31, Olney et al. disclose a preformed sleeve for covering a pot (Figs. 2 and 3) having an upper end, lower end, and outer peripheral surface comprising a base portion having an upper end (region around leadline of 112 in Fig. 3) and closed lower end (region around leadline 26a of Fig. 3; 108 of Fig. 2), an interior space when open (see Fig. 2), and, a plurality of unconnected, vertically oriented, accordion-like, expandable folds (114 of Figs. 2 and 3) in the

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base. Not disclosed is the base portion initially constructed to have a flat condition and having a flat condition prior to being opened for receiving the pot and having a tapered shape when in the flat condition. Adeboi et al., however, discloses a preformed sleeve with base portion initially constructed to have a flat condition (shown in Fig. 2) having a flat condition prior to being opened (shown in Fig. 2) for receiving a pot and having a tapered shape when in the flat condition (shown in Fig. 2). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the sleeve of Olney et al. by constructing it in a flattened, tapered condition as disclosed by Adeboi et al. so as to have a sleeve that is simple and inexpensive to manufacture (see Adeboi et al. at col. 3 lines 9-11) as well as efficient to transport in bulk.

As to Claim 33, Olney et al. further disclose accordion-type folds (Fig. 3).

Claims 1, 4-7, 10, 21, 23, 24, 31, 33, and 35 are rejected under 35 U.S.C. §103(a) as being unpatentable over Weder et al. (US 5,314,398) in view of White (US 4,608,283).

As to Claim 1, Weder et al. ('398) disclose a preformed sleeve for covering a pot (Figs. 1-3) having an upper end, lower end, and outer peripheral surface comprising a base portion having an upper end (16 of Fig. 1) and closed lower end (18 of Fig. 1); a skirt portion (14 of Fig. 1) extending from the upper end of the base; and a plurality of unconnected, vertically oriented, accordion-like, expandable folds (30a-30q of Fig. 2; col. 3 lines 30-35) in the base wherein when a pot is in the sleeve the folds expand so that the base substantially covers and surrounds the outer peripheral surface of the pot; the sleeve would have a tapered shape when flat (inherent in Fig. 1 when flattened on the side). Not disclosed is the base portion initially constructed to have a flat condition and having the flat condition prior to being opened for receiving the pot. White,

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however, discloses preformed sleeve (Figs. 1-8) constructed to have a flat condition (Fig. 1; col. 1 lines 23-26) and having the flat condition prior to being opened for receiving the pot (inherent in Figs. 1 and 2 and col. 1 lines 23-26). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the sleeve of Weder ('398) by constructing to have a flat condition and having the flat condition prior to being opened for receiving the pot as disclosed by White so as to increase the ease of storage, shipment, display, and using a minimum of space (see White at col. 1 lines 23-26). (Note: Examiner considers the priority of the present application to extend no farther than to US 6,151,830 (filed 22 April 1998) because in its immediate priority document, US 5,749,171, neither the specification or drawings disclose a sleeve with vertical oriented folds.)

As to Claims 4-5, Weder et al. further disclose the sleeve having a thickness of from 0.1 to 30 mils (col. 2 lines 38-44).

As to Claims 6, Weder et al. ('398) as modified by White further disclose made from a polymeric film (col. 2 lines 34-37 of Weder et al. ('398)).

As to Claim 7, Weder et al. ('398) as modified by White further disclose z-shaped pleats (col. 3 lines 30-35 of Weder et al. ('398); defining these pleats as z-shaped).

As to Claim 10, Weder et al. ('398) as modified by White further disclose the folds being continuous from the base to the skirt (see Fig. 1 of Weder et al. ('398)).

As to Claim 21, Weder et al. ('398) disclose a preformed sleeve for covering a pot (Figs. 1-3) having an upper end, lower end, and outer peripheral surface comprising a base portion having an upper end (16 of Fig. 1) and closed lower end (18 of Fig. 1); a skirt portion (14 of Fig.

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1) extending from the upper end of the base; and a plurality of unconnected, vertically oriented, accordion-like, expandable folds (30a-30q of Fig. 2; col. 3 lines 30-35) in the base wherein when a pot is in the sleeve the folds expand so that the base substantially covers and surrounds the outer peripheral surface of the pot, the sleeve would have a tapered shape when flat (inherent in Fig. 1 when flattened on the side). Not disclosed is the base portion initially having a flat condition prior to being opened for receiving the pot. White, however, discloses preformed sleeve (Figs. 1-8) initially having the flat condition prior to being opened for receiving the pot (inherent in Figs. 1 and 2 and col. 1 lines 23-26). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the sleeve of Weder ('398) by having the flat condition prior to being opened for receiving the pot as disclosed by White so as to increase the ease of storage, shipment, display, and use of space (see White at col. 1 lines 23-26). The sleeve of Weder et al. ('398) as modified by White would inherently perform the method steps recited in Claim 21. (Note: Examiner considers the priority of the present application to extend no farther than to US 6,151,830 (filed 22 April 1998) because in its immediate priority document, US 5,749,171, neither the specification or drawings disclose a sleeve with vertical oriented folds.)

As to Claim 23, Weder et al. ('398) as modified by White further disclose the folds being continuous from the base to the skirt (see Fig. 1 of Weder et al. ('398)).

As to Claim 24, Weder et al. ('398) as modified by White further disclose the upper portion sized to substantially surround and enclose a floral grouping disposed in the pot (see Weder et al. ('398) Fig. 1).

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As to Claim 31, Weder et al. ('398) disclose a preformed sleeve for covering a pot (Figs. 1-3) having an upper end, lower end, and outer peripheral surface comprising a base portion having an upper end (16 of Fig. 1) and closed lower end (18 of Fig. 1), an interior space when open (see Fig. 2); and, a plurality of unconnected, vertically oriented, accordion-like, expandable folds (30a-30q of Fig. 2; col. 3 lines 30-35) in the base, the sleeve would have a tapered shape when flat (inherent in Fig. 1 when flattened on the side). Not disclosed is the base portion initially constructed to have a flat condition and having the flat condition prior to being opened for receiving the pot. White, however, discloses preformed sleeve (Figs. 1-8) constructed to have a flat condition (Fig. 1; col. 1 lines 23-26) and having the flat condition prior to being opened for receiving the pot (inherent in Figs. 1 and 2 and col. 1 lines 23-26). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the sleeve of Weder ('398) by constructing to have a flat condition and having the flat condition prior to being opened for receiving the pot as disclosed by White so as to increase the ease of storage, shipment, display, and use of space (see White at col. 1 lines 23-26). (Note: Examiner considers the priority of the present application to extend no farther than to US 6,151,830 (filed 22 April 1998) because in its immediate priority document, US 5,749,171, neither the specification or drawings disclose a sleeve with vertical oriented folds.)

As to Claim 33, Weder et al. ('398) as modified by White further disclose z-shaped pleats (col. 3 lines 30-35 of Weder et al. ('398); defining these pleats as z-shaped).

As to Claim 35, Weder et al. ('398) disclose a preformed sleeve for covering a pot (Figs. 1-3) having an upper end, lower end, and outer peripheral surface comprising a base portion

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having an upper end (16 of Fig. 1) and closed lower end (18 of Fig. 1), an interior space when open (see Fig. 2), the sleeve having a tapered shape when in the flat condition (inherent in Fig. 1 when flattened on the side); and, a plurality of unconnected, vertically oriented, accordion-like, expandable folds (30a-30q of Fig. 2; col. 3 lines 30-35) in the base. Not disclosed is the base portion initially having a flat condition prior to being opened for receiving the pot. White, however, discloses preformed sleeve (Figs. 1-8) initially having the flat condition prior to being opened for receiving the pot (inherent in Figs. 1 and 2 and col. 1 lines 23-26). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the sleeve of Weder ('398) by initially having the flat condition prior to being opened for receiving the pot as disclosed by White so as to increase the ease of storage, shipment, display, and use of space (see White at col. 1 lines 23-26). The sleeve of Weder et al. inherently discloses the method steps of Claim 35 when used. (Note: Examiner considers the priority of the present application to extend no farther than to US 6,151,830 (filed 22 April 1998) because in its immediate priority document, US 5,749,171, neither the specification or drawings disclose a sleeve with vertical oriented folds.)

Claims 2, 8, 12-17, 19, 20, 22, 32, and 36 are rejected under 35 U.S.C. §103(a) as being unpatentable over Weder et al. (US 5,314,398) in view of White (US 4,608,283) in further view of Landau (US 5,235,782).

As to Claim 2, the limitations of Claim 1 are disclosed as described above. Not disclosed is an upper portion extending from the skirt and detachable therefrom via a detaching element. Landau, however, discloses an upper portion (28 of Fig. 1) extending from the skirt and

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detachable therefrom via a detaching element (26 of Fig. 1). It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the sleeve of Weder et al. ('398) as modified by White by adding a detachable upper portion as disclosed by Landau so that the sleeve can be secured on a hanger before use (see Landau at col. 3 lines 28-32).

As to Claim 8, the limitations of Claim 1 are disclosed as described above. Not disclosed is a portion for a support device. Landau, however, discloses a portion (28 of Fig. 1) for a support device. It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the sleeve of Weder et al. ('398) as modified White by adding a portion for a support device as disclosed by Landau so that the sleeve can be secured on a hanger before use (see Landau at col. 3 lines 28-32).

As to Claim 22, the limitations of Claim 1 are disclosed as described above. Not disclosed is a portion for a support device. Landau, however, discloses a portion (28 of Fig. 1) for a support device. It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the method of Weder et al. ('398) as modified by White by adding a portion for a support device as disclosed by Landau so that the sleeve can be secured on a hanger before use (see Landau at col. 3 lines 28-32).

As to Claim 32, the limitations of Claim 31 are disclosed as described above. Not disclosed is an upper portion extending from the skirt and detachable therefrom via a detaching element. Landau, however, discloses an upper portion (28 of Fig. 1) extending from the skirt and detachable therefrom via a detaching element (26 of Fig. 1). It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the sleeve of Weder et al.

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('398) as modified by White by adding a detachable upper portion as disclosed by Landau so that the sleeve can be secured on a hanger before use (see Landau at col. 3 lines 28-32).

As to Claim 36, the limitations of Claim 35 are disclosed as described above. Not disclosed is an upper portion extending from the skirt and detachable therefrom via a detaching element. Landau, however, discloses an upper portion (28 of Fig. 1) extending from the skirt and detachable therefrom via a detaching element (26 of Fig. 1). It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the method of Weder et al. ('398) as modified by White by adding a detachable upper portion as disclosed by Landau so that the sleeve can be secured on a hanger before use (see Landau at col. 3 lines 28-32).

As to Claim 12, Weder et al. ('398) disclose a preformed sleeve for covering a pot (Figs. 1-3) having an upper end, lower end, and outer peripheral surface comprising a lower portion (region around leadline of 12 of Fig. 1) having an upper end (region around leadline of 10 in Fig. 1), a lower end (region around leadline of 22 in Fig. 1) having a bottom (18 of Fig. 1), an interior space when open (see Fig. 2), the sleeve having a tapered shape when in the flat condition (inherent in Fig. 1 when flattened on the side); an upper portion (14 of Fig. 1) extending from the lower portion; and a plurality of substantially unconnected, vertically oriented, expandable folds (30a-30q of Fig. 2; col. 3 lines 30-35) in the lower portion wherein when a pot is disposed within the interior space of the lower portion the expandable folds expand so that the base substantially covers and surrounds the outer peripheral surface of the pot. Not disclosed is the lower portion initially having a flat condition prior to being opened to receive a pot; and, the upper portion detachable from the lower portion by a detaching element. White, however, discloses preformed

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sleeve (Figs. 1-8) initially having the flat condition prior to being opened for receiving the pot (inherent in Figs. 1 and 2 and col. 1 lines 23-26). Landau further discloses an upper portion (28 of Fig. 1) extending from the lower portion and detachable therefrom via a detaching element (26 of Fig. 1). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the sleeve of Weder et al. by initially having the flat condition prior to being opened for receiving the pot as disclosed by White so as to increase the ease of storage, shipment, display, and use of space (see White at col. 1 lines 23-26); and, further to modify by making the upper portion detachable as disclosed by Landau so that the sleeve can be secured on a hanger before use (see Landau at col. 3 lines 28-32) and not have holes in the sleeve when used. (Note: Examiner considers the priority of the present application to extend no farther than to US 6,151,830 (filed 22 April 1998) because in its immediate priority document, US 5,749,171, neither the specification or drawings disclose a sleeve with vertical oriented folds.)

As to Claim 13, Weder et al. ('398) as modified by White as further modified by Landau further disclose the upper portion sized to substantially surround and enclose a floral grouping disposed in the pot (see Landau Fig. 2 if it were attached).

As to Claim 14, Weder et al. ('398) as modified by White as further modified by Landau further disclose the sleeve having a thickness of from 0.1 to 30 mils (col. 2 lines 38-44 of Weder et al.).

As to Claims 15, Weder et al. ('398) as modified by White as further modified by Landau further disclose made from a polymeric film (col. 2 lines 34-37 of Weder et al.).

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As to Claim 16, Weder et al. ('398) as modified by White as further modified by Landau further disclose z-shaped pleats (col. 3 lines 30-35; defining these pleats as z-shaped of Weder et al.).

As to Claim 17, Weder et al. ('398) as modified by White as further modified by Landau further disclose a handle (18 of Fig. 1).

As to Claim 19, Weder et al. ('398) as modified by White as further modified by Landau further disclose the folds being continuous from the base to the skirt (see Fig. 1 of Weder et al.).

As to Claim 20, Weder et al. ('398) as modified by White as further modified by Landau further disclose a closed lower portion (see Weder et al. Fig. 2).

Claim 9 is rejected under 35 U.S.C. §103(a) as being unpatentable over Weder et al. (US 5,314,398) in view White (US 4,608,283) in further view of Clement (US 2,827,217).

As to Claim 9, the limitations of Claim 1 are disclosed as described above. Not disclosed is the sleeve with a drainage hole. Clement, however, discloses a pot cover with a drainage hole in a base portion (26 of Fig. 16). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the sleeve of Weder et al. ('398) as modified by White by adding drainage holes as disclosed by Clement so as to allow flow of water to prevent root rot in the soil.

Claim 18 is rejected under 35 U.S.C. §103(a) as being unpatentable over Weder et al. (US 5,314,398) in view of White (US 4,608,283) in further view of Landau (US 5,235,782) in further view of Clement (US 2,827,217).

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As to Claim 18, the limitations of Claim 12 are disclosed as described above. Not disclosed is the sleeve with a drainage hole. Clement, however, discloses a pot cover with a drainage hole in a base portion (26 of Fig. 16). It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the sleeve of Weder et al. as modified by White and Landau by adding drainage holes as disclosed by Clement so as to allow flow of water to prevent root rot in the soil.

Response to Arguments

Applicant's arguments with respect to claims 1-24, 31-33, 35, and 36 have been considered but are moot in view of the new ground(s) of rejection. In regards to the priority of the instant application. Although priority patent US 5,625,979 discloses flat sleeves with vertical, unconnected, expandable folds the priority document US 5,749,171 does not. Since US 6,151,830 is a CIP of 5,749,171 the disclosure of flat sleeves with vertical, unconnected, expandable folds is considered new matter in US 6,151,830. To claim priority to US 5,625,979 there must be an unbroken chain of disclosure back to US 5,625,979 disclosing flat sleeves with vertical, unconnected, expandable folds. Here the chain is broken.

Conclusion

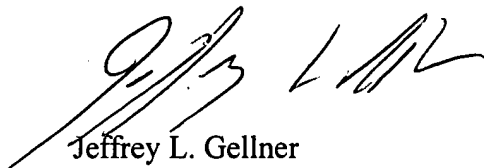
The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Ruda, Waters, and FR 2734988 A1 disclose in the prior art various sleeves that are flat before use.

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Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Jeffrey L. Gellner whose phone number is 703.305.0053. The Examiner can normally be reached Monday through Thursday from 8:30 am to 4:00 pm. The Examiner can also be reached on alternate Fridays.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Supervisor, Peter Poon, can be reached at 703.308.2574. The fax phone numbers for the Technology Center where this application or proceeding is assigned are 703.305.7687, 703.305.3597, and 703.306.4195.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703.308.1113.



Jeffrey L. Gellner